

**COMMISSION FOR MENTAL HEALTH,  
DEVELOPMENTAL DISABILITIES AND  
SUBSTANCE ABUSE SERVICES**

**Rules Committee Minutes**

**Clarion Hotel State Capital  
320 Hillsborough Street  
Raleigh, NC 27603**

**Wednesday, January 20, 2010**

Attending:

**Commission Members:** Jerry Ratley, Jennifer Brobst, Dr. Richard Brunstetter, Dr. James W. Finch, Emily Moore, Larry Pittman, Pamela Poteat, Don Trobaugh, David R. Turpin, Elizabeth Ramos

**Excused Absences:** John R. Corne, Cindy L. Elhers, Thomas Fleetwood, Carl W. Higginbotham

**Division Staff:** Steven Hairston, Denise Baker, Marta T. Hester, Amanda J. Reeder, Andrea Borden, Jason Reynolds, Lynn Jones

**Others:** Robin Surfridge, Michael Glass, Diane Pomper, Tara Fields, Annaliese Dolph, Louise G. Fisher, Ann Rodriguez

**Additional Handouts**

- 1) Rulemaking Process – General Overview
- 2) Proposed Draft Rules: SA Services for Individuals with DWI
- 3) Rulemaking Timeline
- 4) Status of Rules Currently in Process and Newly Proposed Rules
- 5) Proposed Rulemaking Plan

**Call to Order:**

Jerry Ratley, Chairman called the meeting to order at 9:36 a.m. Mr. Ratley called for a moment of reflection. He then asked all present to introduce themselves. Mr. Ratley read the Ethics Reminder and reminded members of mandatory ethics training and the annual Statement of Economic Interest due in April.

**Approval of Minutes:**

*Upon motion, second, and unanimous vote, the Rules Committee approved the minutes of the April 15, 2009 Rules Committee Meeting.*

**Overview of the Commission Rulemaking Process**

Amanda J. Reeder, Rulemaking Coordinator, Operations Support Section, NC Division of MH/DD/SAS, gave a brief overview of the Commission rulemaking process, referencing information found on the Commission's website.

Don Trobaugh, Rules Committee member, stated that when the Rules Committee met in April 2009, Stephanie Alexander informed the Committee that the Division of Health Service Regulation identified a list of rules that were outdated and needed correction. Mr. Trobaugh asked if the Committee could see the list. Denise Baker, Team Leader, Division Affairs,

responded that Steven Hairston would address this during his presentation on 2010 Rulemaking Agenda.

Pamela Poteat, Rules Committee member, asked if the local CFAC provided input on the rules to the State CFAC. Ms. Baker responded that each member of the External Advisory Team (EAT) is responsible for sending the rules out to the various constituents, getting the information from them and then providing the feedback to the Division.

Jennifer Brobst, Rules Committee member, asked if the Rules Committee members ever have access to the discussion that takes place at the EAT meetings. Steven Hairston, Section Chief, responded that if EAT has suggestions or recommends changes to the rules, the staff will incorporate those changes to the rule as appropriate and include suggestions in the comment grid.

**Proposed Amendment of 10A NCAC 26F .0104 & .0105 – Schedule III and Schedule IV**

William Bronson, Drug Control Unit Manager, Community Policy Management Section, NC Division of MH/DD/SAS, presented the proposed amendment of Rules 10A NCAC 26F. 0104 and .0105 – Schedule III and Schedule IV. Mr. Bronson proposed that these rules be amended to include substances that were added and classified by the Federal Department of Health and Human Services as follows:

1. Fospropofol, including its salts, isomers and salts of isomers whenever the existence of such salts isomers and salts of isomers is possible, placed in Schedule IV; and
2. Boldine, desomethyltestosterone, and 19-nor-4-,9(10)-androstadienedione and their salts, esters, and ethers placed in Schedule III.

The Commission for MH/DD/SAS has authority to schedule substances and amend the controlled substances schedules to conform with federal law. Mr. Bronson explained that amending these rules will maintain consistency with Federal DHHS scheduling. The proposed amendments were presented to the Rules Committee for final review and approval to forward to the full Commission.

*Upon motion, second, and unanimous vote, the Rules Committee approved the proposed amendment of 10A NCAC 26F .0104 & .0105 to be forwarded to the full Commission for final review.*

**Proposed Amendment of 10A NCAC 27G .3800 – Substance Abuse Services for DWI Offenders**

Lynn Jones and Jason Reynolds, Justice Systems Innovation Team, NC Division of MH/DD/SAS, presented the proposed amendment of 10A NCAC 27G .3800. Ms. Jones and Mr. Reynolds proposed that these rules be amended to include current statutory citations and language, as well as include updated research based practices. In addition, they proposed that some rules be repealed in order to delete redundant language. The Commission has rulemaking authority for these rules, which were presented to the Rules Committee for initial review and approval to forward to the full Commission for publication.

Dr. Richard Brunstetter, Rules Committee member, asked Ms. Jones and Mr. Reynolds requested data on individuals who are under 21 years old and receive treatment, as well as those with dual diagnoses. Ms. Jones and Mr. Reynolds informed Dr. Brunstetter that the Division collects such data, and agreed to present it at a later meeting.

The following are suggested recommendations from Rule Committee members for these Rules:

Rule 10A NCAC 27G .3805:

1. Dr. Richard Brunstetter recommended adding “psychiatric history” to the definition of clinical interview.
2. Jennifer Brobst, Rules Committee member, recommended either refining the definition for DWI Substance Abuse assessment or making sure that Rule .3807, “DWI Substance Abuse Assessment Elements” is as detailed as necessary to ensure that a clinical interview is an element of the assessment.
3. Ms. Brobst recommended adding a definition of “outpatient treatment” to the definitions.

Rule 10A NCAC .3807:

1. Ms. Brobst objected to the language “such as” on line 20; she urged staff to craft language to ensure that the treating agency cannot send sensitive records to parties who would not need to see the information.
2. Jerry Ratley, Rules Committee Chair, requested that the Attorney General’s office be consulted on the addition of the language “such as”.

Rule 10A NCAC 27G .3810:

1. Dr. James W. Finch, Rules Committee member, recommended adding “face to face” in line 4 to ensure that orientation or intake is done face to face.
2. In addition, Dr. Finch disagreed with Ms. Jones’ intention to change the requirements regarding the maximum number of members in an outpatient therapy group, and urged Ms. Jones to keep the group size 8-12, and not increase it to 20.
3. Ms. Jones agreed to remove any references to a minimum number of participants in (d)

Rule 10A NCAC 27G .3811: Pursuant to a recommendation by Dr. Finch, Division staff agreed to include a requirement for “urine analysis for drug screening”

Rule 10A NCAC 27G .3813:

1. Division staff noted that an inadvertent error lead to Substance Abuse Comprehensive Outpatient Program (SACOT) level treatment being left out of the rule; this treatment level will be added to future versions of the rule.
2. Dr. Finch suggested reviewing the criteria, including “grief and loss”, to determine if they are needed in order to treat clients.

Rule 10A NCAC 27G .3816:

1. Ms. Brobst objected to removing the prohibition against using family members as translators.
2. In addition, Ms. Brobst suggested that the term “special populations” be struck from the rule.

Rule 10A NCAC 27G .3817:

1. Ms. Brobst suggested broadening the language regarding education curriculum by adding other programs consistent with best practice.
2. Dr. Finch suggested the rule break down substance abuse v. dependence for the curriculum.

Several committee members inquired why this particular set of rules did not follow the process as outlined in the presentation given by Amanda J. Reeder, Rulemaking Coordinator, earlier that morning, in that they bypassed review by EAT. Denise Baker, Team Leader, Division Affairs,

responded that EAT is consulted when that group has the opportunity to meet prior to the Rules Committee meeting; in this particular instance, EAT had not met before the Rules Committee presentation of this rule. Ms. Baker also stated that the rules, after being presented to the Rules Committee, will be reviewed by the Executive Leadership Team (ELT) at the Division for final review prior to the presentation to the Commission if there are significant changes recommended to the rule during the public comment period.

Mr. Ratley asked Mr. Hairston to relay the concerns of the Rule Committee to Leza Wainwright, the Director of the Division of MH/DD/SAS. In addition, Mr. Ratley requested that Mrs. Wainwright provide an overview of EAT within the rulemaking process at the upcoming Commission meeting in February, as well as address the logistics of making sure the Rules Committee has all the information and outside comment they need prior to considering a rule.

Ms. W. Denise Baker suggested that a workgroup comprised of Rules Committee members with expertise in the Substance Abuse Services arena be given the opportunity to review the rules once the recommended changes have been incorporated and provide feedback prior to their review by the full Commission. The following members of the Rules Committee agreed to review and provide feedback on the rules as further amended: Dr. Finch, David Turpin, Larry Pittman, Jennifer Brobst, and Elizabeth Ramos.

*Upon motion, second, and unanimous vote, the Rules Committee approved the proposed amendments of 10A NCAC 27G .3800 with the recommended changes to be forwarded to the full Commission for publication.*

#### **Update on 10A NCAC 26D – NC Department of Correction Standards for Mental Health and Mental Retardation**

Jerry Ratley, Rules Committee Chair, presented an update to the Committee on these rules. Mr. Ratley stated that General Statute §148-19 authorizes the Commission to set rules for standards of mental health and mental retardation services administered to inmates in the custody of the Department of Corrections. A workgroup convened in 2007 to amend the current rules. The workgroup met several times and completed a large volume of work. The rules are in the final stages of review by the Department of Correction personnel and are awaiting final comments and clarification. Once those comments have been given, they will be sent to the workgroup. Once the workgroup has received and reviewed these suggestions and comments, the group will be in a position to bring the recommendations to the Rules Committee for review.

Mr. Ratley told the Rules Committee that the workgroup was informed by the Attorney General's office that the Commission lacks the authority to establish rules for developmental disability services within the Department of Correction. Therefore, treatment for developmental disabilities will not be included in rules that the Rules Committee and Commission will review. However, Dr. John S. Carbone (Commission member and Chief of Mental Health Services at the Department of Prisons) and his staff have assured the workgroup that they have practices and policy in place to provide developmental disability services that would otherwise be required if the Commission had authority to for rulemaking in that area.

#### **2010 Rulemaking Agenda**

Steven Hairston, Section Chief, Operations Support, NC Division of MH/DD/SAS, reviewed the rulemaking process and procedures for the Rules Committee. Mr. Hairston began by discussing an overview of the *Rulemaking Timeline* handout, which presented rules that already completed the rulemaking process. Mr. Hairston discussed the groundwork of how these rules began the process, as well as their timeline for completion.

Don Trobaugh, Rules Committee member, asked why was there a long gap between the Commission review of the rule and publication of the rule in the NC Register. Mr. Hairston responded that part of the process involves development of the fiscal note, which includes a review of the rule by the Department and the Office of State Budget Management (OSBM). Mr. Hairston indicated that the DMH/DD/SAS has no authority over the OSBM adding that the only groups that control this are the Governor, who may issue an Executive Order to tell OSBM to process the fiscal note in a timely manner or the legislature, through a statutory change.

Jennifer Brobst, Rules Committee member, inquired about the last time the Commission issued a letter or recommendation to the legislative committee on MH/DD/SAS. Mr. Hairston replied that the full Commission has issued several resolutions to the Legislative Oversight Committee (LOC). The last resolution that came from the Commission occurred about a year ago. Mr. Hairston recommended that the Rules Committee consider that route if they felt strongly about this issue.

***Upon motion, second, and unanimous vote, the Rules Committee approved a motion for the staff to draft a letter for Chairman Corne's signature to the Legislative Oversight Committee asking them to address the issue of processing the fiscal notes through OSBM in a timely manner and to bring the letter to the full Commission next month for final review.***

Mr. Hairston then reviewed the *Status of Rules Currently in Process and Newly Proposed Rules*. Mr. Hairston presented this handout for the Rules Committee in order to inform the members of the rules that staff is currently working on and their progress thus far.

Finally, Mr. Hairston reviewed the *Proposed Rulemaking Plan*. Mr. Hairston stated that these rules are recommendations of work that the Rules Committee could undertake for the next six months. Mr. Hairston explained that, in the last six months, staff has been in the process of reviewing the current MH/DD/SAS rules. Mr. Hairston informed the Committee that there are several rules that have not been reviewed or amended since promulgation. Mr. Hairston stated that Division staff has begun reviewing all MH/DD/SAS rules in order to identify new rules that can be adopted, rules that can be repealed, and rules that need technical changes or amendment.

***Upon motion, second, and unanimous vote, the Rules Committee adopted the Proposed Rulemaking Plan to be forwarded to the Commission for adoption.***

Dr. James W. Finch, Rules Committee member, asked if the Commission members could be involved in the initial process of rulemaking. Mr. Hairston informed Dr. Finch that the Committee members are welcome to do so, and added that the best way to become involved in the process would be to join workgroups as they create rule language. Mr. Hairston further stated that with the adoption of the *Proposed Rulemaking Plan*, new rules would be promulgated and invited Committee members to inform staff of any workgroups or areas they would like to join, so that staff can link them to the prospective workgroup.

#### **Public Comment**

There was no public comment.

**There being no further business, the meeting adjourned at 12:30 pm.**